

**ORDINANCE NO. 6-92
CHAPTER 24
TO REGULATE SMOKING IN THE
WORKPLACE**

AN ORDINANCE to amend Chapter 24 by creating new Article 11, entitled Environmental Control and by adding sections 24-11 -1 through 24-11-7 which provide for the regulation of smoking in the workplace in the city of Detroit.

IT IS HEREBY ORDAINED BY THE PEOPLE OF THE CITY OF DETROIT:

Section 1. That Chapter 24 of the Code of the City of Detroit be amended by adding Sections 24-11-1 through 24-11-7 as follows:

Sec. 24-11 -1 Ordinance Title

This Ordinance shall be known as the Smoking Pollution Control Ordinance.

Sec. 24-11-2 Purpose

Because the smoking of tobacco or any other weed or plant is a cause of material annoyance and discomfort to those who are present in confined places and is a proven danger to their health, the City hereby declares that the purposes of this ordinance are (1) to protect the public health and welfare by regulating smoking in the workplace and (2) to minimize the toxic effects of smoking in a workplace by requiring an employer to adopt a policy that will prohibit smoking in a workplace and accommodate, insofar as possible, the preferences of nonsmokers and smokers.

This ordinance is not intended to create any right to smoke or to impair or alter an employer's prerogative to prohibit smoking in the workplace. Rather, if an employer allows employees to smoke in the workplace, this ordinance requires (1) that the employer make accommodations for the preferences of both nonsmoking and smoking employees, and (2) if a satisfactory accommodation to all affected nonsmoking employees cannot be reached, that the employer prohibit smoking in the workplace.

Sec. 24-11-3 Definitions

As used in this ordinance, the following terms shall have the following meanings, unless the context clearly indicates that a different meaning is intended:

- (1) **Employee:** Any person who is employed by any employer in consideration for direct or indirect monetary wages or profit.
- (2) **Employer:** Any person who employs the services of an individual person.
- (3) **Enclosed Area:** The term "Enclosed Area" shall mean all space between a floor and ceiling which is served by a common heating, ventilating and air conditioning system, and is enclosed on all sides by solid walls or windows (exclusive of door or passage ways) which extend from the floor to the ceiling, including all space therein screened by partitions which do not extend to the ceiling or are not solid, "Office Landscaping", or similar structures.
- (4) **Person:** Any individual person, firm, partnership, association, corporation, company, organization, or legal entity of any kind.

(5) **Smoking:** The term "smoking" means lighting, inhaling, exhaling or burning any pipe, cigar, cigarette, weed, or plant, or carrying any lighted pipe, lighted cigar, lighted cigarette, lighted weed, lighted plant, or other ignited combustible substance in any manner or in any form.

(6) **Shared Workplace:** A workplace or part of a workplace which is regularly used by more than one employee.

(7) **Workplace:** Any enclosed area or any part of an enclosed area used in the performance of employment or related activities of a commercial enterprise or nonprofit entity, including but not limited to places:

(a) Utilized for: (1) the manufacturing, processing, assembly, maintenance or repair of any products, goods, equipment, tools, appliances, furnishings or other object; or (2) the physical storage for purposes or wholesaling, future utilization for operational purposes, or future transfers preceding consumption or other utilization of any products, goods, merchandise, materials, supplies, equipment, tools, appliances or furnishings;

(b) Utilized as a conference room, auditorium, library, office machine station, lunchroom, vending area, locker room lounge, restroom, cafeteria, training room, classroom, lecture room, hallway, or stairwell used primarily for the benefit of employees.

Notwithstanding the provisions of this definition, a private residence including either an attached or detached garage shall not constitute a workplace, except when the residence serves as a licensed day care facility for children; nor shall motor vehicles which are used to transport employees during the course of their employment constitute a workplace except when the vehicles are owned and maintained by the employer.

Sec. 24-11-4. Regulation of Smoking in the Workplace.

(a) Within ninety days of the effective date of this chapter, or within ninety days of having first engaged the services of a second employee, any employer of two or more employees shall adopt, implement, and maintain a written smoking policy which shall contain at a minimum the following:

(1) Prohibition of smoking in the workplace, except where smoking is designated, including employer conference and meeting rooms, classrooms, auditoriums, restrooms, medical facilities, hallways;

(2) Provision and maintenance of a contiguous smoking area of not more than one-half of the seating capacity and floor space in cafeterias, lunchrooms and employee lounges;

(3) Any employee in the workplace shall be given the right to designate his or her immediate work area as a nonsmoking area and to post it with appropriate signs or sign. The policy adopted by the employer shall include a definition of the term "immediate work area" which gives preferential consideration to nonsmokers.

(b) If any nonsmoking employee occupying a shared workplace objects to the employer about smoke in the employee's workplace, the employer, using already available means of ventilation or separation or partition of office space, shall attempt to reach a reasonable accommodation, insofar as possible, between the preferences of nonsmoking and smoking employees; provided that an employer is not required by this chapter to make any expenditures or structural changes to accommodate the preferences of nonsmoking or smoking employees.

(c) In any dispute arising under the smoking policy, the rights of the nonsmoker shall be given precedence.

(d) Except where other signs are required, whenever smoking is prohibited, conspicuous signs shall be posted so stating, containing all capital lettering not less than one inch in height on a contrasting background.

(e) Notwithstanding the provisions of subsection (A) of this section, all employers shall have the right to designate any workplace as a nonsmoking area.

(f) The smoking policy shall be communicated to all employees within three weeks of its adoption.

(g) This section is not intended to regulate smoking in the following places and under the following conditions:

(1) A private home which may serve as a workplace (unless it is used as a licensed day care facility for children);

(2) Any property owned or leased by governmental agencies;

(3) A private enclosed workplace occupied exclusively by smokers, even though such a workplace may be visited by nonsmokers, excepting places in which smoking is prohibited by the fire marshal or by other law, ordinance or regulation;

(4) Any workplace where smoking is regulated by other law, ordinance or other authority and any workplace exempted from regulation by other law, ordinance or other authority.

(h) Any employer who develops and implements a reasonable policy regarding smoking and nonsmoking in the workplace shall be deemed to be in compliance with this section provided that a policy which knowingly omits the elements required in subsection (A) or which designates an entire workplace as a smoking area shall not be deemed a reasonable policy.

Sec. 24-11-5. Compliance.

Each employer and other person in charge of any non-smoking area designated by this ordinance shall take steps to cause all persons using the premises to comply with this ordinance. Such steps may include, but are not limited to, directing any person who is smoking to cease smoking, directing any person failing to cease smoking to leave the nonsmoking area, and in the case of smoking employees, taking appropriate disciplinary action for repeated willful violations.

Sec. 24-11-6. Violation of Ordinance.

Any person persisting in smoking in violation of this ordinance after an oral or written warning to cease smoking may be prosecuted for violating this ordinance. Failure to post signs and failure to provide an earlier oral warning shall not excuse continuing to smoke after a warning.

Sec. 24-11-7. Enforcement and Penalties.

(a) Enforcement of this article shall be under the jurisdiction of the Director of Health pursuant to PA. of 1978, No. 368, Sec. 2435.

(b) Violations of or non-compliance with requirements found within this article shall constitute a misdemeanor offense, punishable by penalty set forth in Sec. 1-1-9 (General Penalty) of the Detroit City Code.

Section 2. All ordinances or parts of ordinances in conflict herewith be and the same is hereby repealed.

Section 3. This ordinance is declared necessary for the preservation of the public health, safety and welfare of the people of the City of Detroit and is effective sixty days from the date of enactment.

(J.C.C. P.	February 26, 1992)
Passed	March 18, 1992
Published	March 30, 1992
Effective	May 22, 1992

JAMES H. BRADLEY
City Clerk